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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,035	08/21/2003	Michael E. Ring	CRD 01482	7356

⁷⁵⁹⁰
JAMES RAY & ASSOCIATES
2640 Pitcairn Road
Monroeville, PA 15146
^{11/09/2010}

EXAMINER

BURCH, MELODY M

ART UNIT	PAPER NUMBER
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3657

MAIL DATE	DELIVERY MODE
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11/09/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.		Applicant(s)	
	10/645,035		RING ET AL.	
	Examiner		Art Unit	
	Melody M. Burch		3657	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5,6,9-13,16-18 and 26-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5,6,9-13,16-18 and 26-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 February 2010 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/3/10 has been entered.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitation of the elongated flange and its particularly recited construction and arrangement with respect to the third plate member as recited in claims 6, 9, 26 (recited simply as "flange"), 29, and 30 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Examiner notes that the claimed subject matter recites that the elongated flange is, for example, disposed on an opposed second surface of the third plate member. Examiner further notes that in the most recent remarks Applicant points out that the third plate member is element 76 and the elongated flange is element 85 (pg. 25 of the remarks). Examiner notes that the flange 85 is not disposed with respect to the third plate member 76 as claimed since flange 85 is associated with the vertically disposed plate during use shown in the area of element 80 and the third plate member is associated with the vertically disposed plate during use shown in the area of element

60 as shown in figure 3. Examiner also notes that element 85 is shown in figure 5 as a flange but it does not show apertures formed through the thickness of the flange as required by the cited claims. Applicant mentions the presence of apertures 98 through a flange, but the flange does not appear to be flange 85 shown in figure 5. Also see the 112 first rejections below.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. In addition to Replacement Sheets containing the corrected drawing figure(s), applicant is required to submit a marked-up copy of each Replacement Sheet including annotations indicating the changes made to the previous version. The marked-up copy

must be clearly labeled as "Annotated Sheets" and must be presented in the amendment or remarks section that explains the change(s) to the drawings. See 37 CFR 1.121(d)(1). Failure to timely submit the proposed drawing and marked-up copy will result in the abandonment of the application.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 6, 9-13, 16-18, and 26-30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The limitation of the elongated flange and its particularly recited construction and arrangement with respect to the third plate member as recited in claims 6, 9, 26 (recited simply as "flange"), 29, and 30. Examiner notes that the claimed subject matter recites that the elongated flange is, for example, disposed on an opposed second surface of the third plate member. Examiner further notes that in the most recent remarks Applicant points out that the third plate member is element 76 and the elongated flange is element 85 (pg. 25 of the remarks). Examiner notes that the flange 85 is not disposed with respect to the third plate member 76 as claimed since flange 85 is associated with the vertically disposed plate during use shown in the area of element 80

and the third plate member is associated with the vertically disposed plate during use shown in the area of element 60 as shown in figure 3. Examiner also notes that element 85 is shown in figure 5 as a flange but it does not show apertures formed through the thickness of the flange as required by the cited claims. Applicant mentions the presence of apertures 98 through a flange, but the flange does not appear to be flange 85 shown in figure 5. The remaining claims are rejected due to their dependency from one of the independent claims.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re: claim 6. The following phrases are indefinite:

- In line 24 from the bottom the phrase "said air spring actuator assembly" it is unclear whether the phrase is intending to refer to the air spring actuator earlier recited or something different;
- In lines 22-23 from the bottom the phrase "said third plate member" is indefinite since it is unclear how there is a third plate member when no second plate member was mentioned;
- In lines 20-21 from the bottom the phrase "said opposed second substantially planar surface of said third plate member" is indefinite since the limitation of the third plate member is indefinite;

- In line 8 from the bottom the phrase "said first plate member" is indefinite since it is unclear whether the first plate member is intended to be the same or different from the earlier recited plate member;
- In lines 6-7 from the bottom the phrase "said first substantially planar surface of said first plate member" is indefinite since the limitation of the first plate member is indefinite.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6792704 to Johnson in view of US Patent 6116385 to Ring.

Re: claim 1. Johnson shows in figures 1 and 2 an actuating member capable of being used for a railway vehicle brake assembly, the vehicle brake assembly having an air spring actuator 1 incorporated therein, the air spring actuator having a pair of spaced apart end surfaces below 18(a) and above 18(b) and at least one inflatable air bag spring 3 defining an exterior peripheral surface of the air spring actuator, at least one of the pair of spaced apart end surfaces at least the top one having a plurality of mounting member extending outwardly therefrom as shown, said actuating member comprising: a first plate member 18(a) disposed substantially vertically with respect to element 20 during use of the brake assembly, the first plate member having a first

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substantially planar surface thereof disposed in abutting relationship with one of the pair of spaced apart end surfaces of the air spring actuator as shown, the first plate member exposing the exterior peripheral surface of the at least one inflatable air spring to an atmospheric operating environment characterized by a presence of detrimental extraneous foreign material when the car mounted brake assembly is in use; a second plate member 20 disposed substantially horizontally with respect to 18(a) during use of the brake assembly, the second plate member directly attached to the first plate member at a bottom edge thereof and extending substantially perpendicular to the first substantially planar surface of the first plate member for shielding at least a first portion of the exterior peripheral surface of the air spring actuator from the detrimental extraneous foreign material; a structure 17,35 disposed on and attached to an opposed second surface of the first plate member for securing the actuating member to an actuating linkage of the brake assembly; a plurality of mounting apertures formed through a thickness of the first plate member as shown each of the plurality of mounting apertures operatively aligned with and sized to pass therethrough a perspective one of the plurality of mounting members extending outwardly from the one of the pair of end surfaces, a third plate member or other element 20 having a first end thereof disposed on the first substantially planar surface of the first plate member adjacent each of the bottom edge and a side edge thereof, the third plate member extending substantially perpendicular to the first plate member in close proximity to an inner surface of the second plate member as shown in the annotated figure on pg. 6.

Johnson is silent with regards to the vehicle brake assembly being a railway vehicle brake assembly.

Ring teaches in figures 1 and 3 the use of a brake assembly being in the form of a railway vehicle brake.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified vehicle brake assembly of Johnson to have been a railway vehicle brake system, as taught by Ring, in order to provide a means of controlling movement between components of a rail vehicle to improve the feel of the ride on the rail vehicle.

Johnson is silent with regards to the other spaced apart end surface having a plurality of mounting members.

Johnson teaches in figure 2 the top spaced apart end surface having a plurality of mounting members.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the other spaced apart end surface to have included a plurality of mounting members, as taught by Johnson, in order to provide an effective way of securing the end surface to portion 18(b).

In *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960) the court held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced.

Re: claim 5. Johnson, as modified, shows in figure 1 of Johnson the means 17 including at least one plate member 17 having an aperture formed therethrough shown surrounding element 12 and a pin member 12 disposed in the aperture for securing the at least one plate member to such control linkage.

10. Claims 1 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of Ring and further in view of US Patent 6142480 to Streitman et al.

Johnson, as modified, is not explicit with regards to the operating environment being characterized by a presence of detrimental extraneous foreign material.

Streitman et al. teach in col. 1 the use of a railway vehicle brake being in the environment characterized by a presence of detrimental extraneous foreign material.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a surrounding environment characterized by detrimental extraneous foreign material, as taught by Streitman et al., since it is old and well-known in the art that vehicles operate in an environment marked by detrimental extraneous foreign material such as vehicle emissions and other harmful byproducts output from other machines.

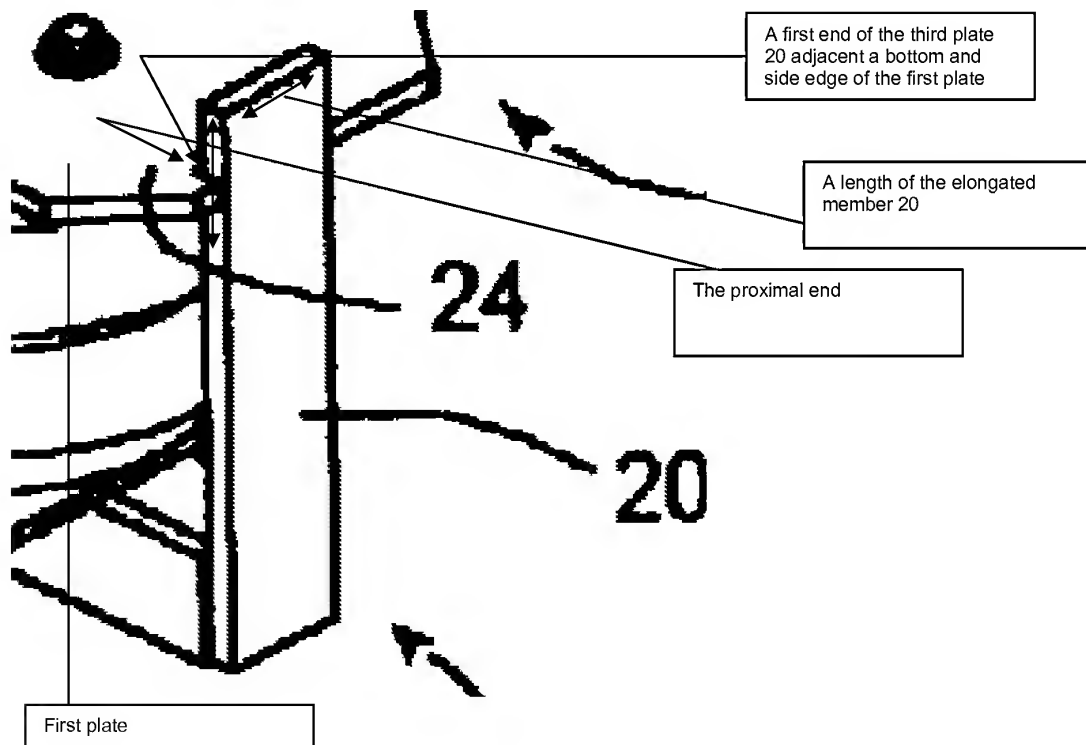
Allowable Subject Matter

11. Claim 6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

12. Claims 6, 9-13, 16-18, and 26-30 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Response to Arguments

13. Applicant's arguments filed 11/3/10 have been fully considered but they are not persuasive. Claim 1 has been amended. Examiner notes; however, that the amendment does not overcome the following interpretation of Johnson:



As clearly shown in the annotated drawing on pg. 10 the third plate member or the other element 20 has a first end or the edge as labeled disposed on the surface of the first plate member adjacent both the bottom and side edge of the first plate member.

Examiner further notes that the third plate member extends perpendicularly to the first plate member in close proximity to an inner surface of the second plate member or the opposite element 20 shown in figure 2. Examiner notes that "close proximity" is a relative term. Examiner notes that third plate member is positioned in close proximity to the other element 20 as compared to its relative position with respect to element 25 shown in figure 2. Applicant does not clearly define "close proximity" in the specification or in the drawings. Figure 3 shows elements 64 and 76 but does not show a view that clearly sets forth what Applicant considers to be "close proximity". In *Rosemount Inc. v. Beckman Instruments Inc.* the court held that "close proximity" is as precise as the subject matter permits. *Rosemount Inc. v. Beckman Instruments Inc.*, 727 F.2d 1540, 221 USPQ 1, 7 (Fed. Cir. 1984). Since the subject matter fails to provide clear guidance, Examiner turned to Merriam Webster's Collegiate Dictionary 10th Edition which defines proximity as "the quality or state of being proximate: closeness." Since closeness is relative, Examiner maintains that one element 20 of Johnson is close to the other element 20 as compared to its position with respect to element 25 as shown in figure 2 of Johnson.

Accordingly, the rejections of claims 1 and 5 have been maintained.

Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melody M. Burch whose telephone number is 571-272-7114. The examiner can normally be reached on Monday-Friday (6:30 AM-3:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Siconolfi can be reached on 571-272-7124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

mmb
November 5, 2010

/Melody M. Burch/
Primary Examiner, Art Unit 3657